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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANTEYA DANYELL WILLIAMS, MARY
RUTH SCOTT, KAREN LATREECE
COLEMAN, PRISCILLA BUNTON, and
ALYCE DENISE PAYNE, on behalf of
themselves and all others similarly situated,

Plaintiffs,
v.
CITY OF ANTIOCH,
Defendant.

No. C-08-2301 SBA

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: January 12, 2010
Time: 1 p.m.
Before: Honorable Sandra Brown
Armstrong

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INTRODUCTION

Defendant's Motion for Judgment on the Pleadings ("Motion") asks this Court to dismiss Plaintiffs' Eighth Claim for Relief insofar as that claim seeks statutory minimum damages under the California Bane Act (Cal. Civ. Code § 52.1) for the class and for Priscilla Bunton, one of the five named plaintiffs. Defendant's request for a dismissal of claims in this Motion applies to these two, *and only these two*, specific claims. The sole basis presented in support of the Motion is that plaintiffs failed to file a class government tort claim and Plaintiff Bunton failed to file an individual claim with respect to these two specific damages claims as required by Cal. Gov't Code § 945.4 of the Government Tort Claims Act ("the Tort Claims Act"). Although styled a Motion for Judgment on the Pleadings, Defendant's Motion ignores the allegations and requested relief in the First Amended Complaint.¹ Both of defendant's arguments should be rejected by this Court for the following reasons:

1. This civil rights case is brought by five named plaintiffs individually and on behalf of a class of Antioch residents who have been and are being targeted by city officials and the Antioch Police Department based on their race and their status as Section 8 tenants. Because this class action case has been primarily brought to obtain declaratory and injunctive relief for these residents to bring a halt to this discriminatory, unlawful, and unconstitutional policy and practice, the lawsuit is not subject to the requirements of the Tort Claims Act, even though the First Amended Complaint ("Complaint") does include a prayer for statutory minimum damages as an ancillary part of the overall relief. Therefore, any alleged inadequacies in the tort claims filed by the other four named plaintiffs are immaterial.

2. Even if this lawsuit were subject to the administrative claims

¹ Defendant's motion is not contemplated by the Case Management Order in this case and is arguably a premature attempt to adjudicate the merits of this case prior to class certification. *Californians for Disability Rights v. Cal. Dept. of Transp.*, 249 F.R.D. 334, 345 (N.D. Cal. 2008) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974)). See Case Management Order (Doc. No. 26 (10/02/2008)). Given the allegations of the First Amended Complaint, the issue of whether there has been compliance with the government claim's statute raises issues of fact more appropriately tested in a summary judgment motion, a motion which would likewise be premature prior to the class certification determination.

requirements, plaintiffs complied with the requirements of the Tort Claims Act by filing claims on behalf of the class, alleging an unlawful policy affecting other families like theirs (*i.e.*, African-American Section 8 residents of Antioch). Since Plaintiff Bunton is a member of the class, her damage claims are not barred by her lack of a claim.

FACTUAL BACKGROUND

Defendant ignores the allegations of the First Amended Complaint, which must be taken as true for purposes of this motion. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990). Plaintiffs allege that the City of Antioch and the Antioch Police Department have engaged in a concerted campaign to reduce the African-American Section 8 population and discourage any additional Section 8 families from moving to Antioch. (First Amended Complaint ¶ 2.) Plaintiffs “charge that the City of Antioch intentionally discriminates against African-American Section 8 households on the basis of their race and/or source of income, and has pursued policies and practices that have an unjustified adverse impact upon them.” (*Id.* at ¶ 3.) As victims of this campaign by defendant, Plaintiffs allege that they have been subjected to a pattern of unlawful and discriminatory policies and practices, including, among other things, the unwarranted and abusive investigations, unfounded complaints to the Housing Authority in an attempt to have Section 8 vouchers revoked, and threatening letters to landlords so as to influence landlords to evict Section 8 tenants. (*Id.* at ¶ 2). Additionally, plaintiffs allege that they have been subject to a pattern and practice of illegal searches of their homes. (*Id.* at ¶ 51.) Plaintiffs further allege that this pattern and practice of unlawful conduct is ongoing and will continue unless enjoined by this Court. (*Id.* at ¶¶ 45-58, 143.) All plaintiffs allege they are current recipients of Section 8 benefits. (*Id.* at ¶¶ 59, 66, 74, 83, 90.) Four of the five plaintiffs allege they are current residents of Antioch, and the fifth, plaintiff Payne, alleges she desires to move back in order to be closer to her disabled son’s school. (*Id.* at ¶¶ 59, 66, 74, 83, 98.)²

² Plaintiff Payne has moved back to Antioch since the filing of the First Amended Complaint. Payne Declaration in Support of Class Certification ¶ 2.

As stated in the introduction of the Complaint, “This class action primarily seeks to end the City’s discriminatory and unlawful policies and practices. This action also seeks statutory minimum damages for the class, and additional damages for the named plaintiffs.” (First Amended Complaint ¶¶ 4, 99 (“All damage claims made in [the Complaint] are incidental to and secondary to the injunctive relief claims.”). Specifically, plaintiffs request injunctive relief prohibiting defendant from:

1. Disproportionately targeting class members for criminal investigation on a different basis from similarly situated non-class members;
2. Engaging in, or seeking to engage in, unlawful and pretextual searches of the homes of class members;
3. Handling disturbance or nuisance complaints concerning Section 8 households differently from non-Section 8 households;
4. Communicating, in writing or otherwise, false or unlawfully obtained information of criminal and nuisance activity about class members to the Housing Authority of the County of Contra Costa or to class members’ landlords;
5. Engaging in communications, written or otherwise, to class members’ landlords for the purpose of causing class members’ eviction; and
6. Soliciting complaints about class members from their neighbors and others.

(*Id.* at ¶ 2.) On behalf of the class, Plaintiffs only request monetary relief in the form of statutory minimum damages under the California Bane Act. (*Id.* at 33 ¶ 4.)

Plaintiff Bunton alleges conduct by the Antioch police similar to that alleged on behalf of the class. Bunton alleges that, in September 2006, officers arrived at her home to discuss noise complaints about her household. (First Amended Complaint ¶ 84.) However, the officers proceeded to search her home, even though Bunton refused to consent to the search and the officers had no other lawful authority to do so. (*Id.* at ¶ 85.) The officers searched her entire home, including drawers, and allegedly found men’s clothing and other men’s personal items. (*Id.*) Although Ms. Bunton was fully compliant, the police nonetheless sent a letter to the

Housing Authority the day after this event alleging that Ms. Bunton had an unauthorized male resident and that her household had received minor noise complaints, including noise from children playing basketball in the evening. (*Id.* at ¶ 86.) As a result of this letter and an Antioch police officer's testimony, Ms. Bunton's Section 8 benefits were terminated. (*Id.* at ¶ 87.) Her benefits were later reinstated after a reviewing court found that the hearing officer's findings of fact were not supported by evidence in the record. (*Id.*) As a result of this conduct, "[Antioch's police] practices cause Ms. Bunton to fear contacting APD for any purpose and avoid inviting individuals to her home because she might be subjected to further APD interference." (*Id.* at ¶ 89.)

The First Amended Complaint further states that Plaintiffs Williams, Scott, Coleman, and Payne filed timely notices of claims for money damages against the City pursuant to the Tort Claims Act and that "[e]ach notice alleged that the conduct was part of an illegal policy and practice of discriminatory targeting of African Americans who participate in the Section 8 Voucher Program in Antioch." (First Amended Complaint ¶ 99; *see, e.g.*, Tort Claim of Mary Ruth Scott, Motion for Judgment on the Pleadings Ex. B1 ("These actions were part of the Department's illegal policy and practice of discriminatory targeting of African-American families like mine who participate in the federal Section 8 housing subsidy program in Antioch."))

STANDARD OF REVIEW

Motions for judgment on the pleadings under Fed. R. Civ. P. 12(c) and motions to dismiss for failure to state a claim under Rule 12(b)(6) are "functionally identical," and thus the same standard of review applies to both. *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). In this Circuit, such a motion is "viewed with disfavor and is rarely granted." *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997).

"A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Fairbanks N. Star Borough v. U.S. Army Corps of Eng'rs*, 543 F.3d 586, 591 (9th Cir. 2008) (internal quotation omitted). In determining a Rule 12(c) motion, the Court must accept the non-moving party's allegations as true and assume the moving party's allegations, which the non-moving

party has denied, are false. *See Hal Roach Studios, Inc.*, 896 F.2d at 1550. “Moreover, all inferences reasonably drawn from these facts must be construed in favor of the responding party.” *Tong v. Capital Management Servs. Group, Inc.*, 520 F. Supp. 2d 1145, 1147 (N.D. Cal. 2007) (citing *Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989)).

ARGUMENT

I. THIS LAWSUIT IS NOT SUBJECT TO THE CLAIMS REQUIREMENTS OF THE GOVERNMENT TORT CLAIMS ACT

Defendant blithely assumes that this civil rights lawsuit is a case for “money or damages” brought against a public entity within the meaning of Cal. Govt. Code § 945.4. (*See* Motion at 4-5.) In doing so, it ignores both the allegations and overall thrust of plaintiffs’ complaint, and the case law setting forth the standards courts use to determine whether the non-pecuniary aspects of lawsuits seeking equitable and monetary relief from government entities are within the purview of the claims requirements of the Tort Claims Act. When this Court takes the actual complaint and the relevant case law into account, it should rule that this lawsuit is not subject to the Tort Claims Act’s claims requirements, and thus defendant’s arguments to dismiss the damages claims of the class and Ms. Bunton must fail.

A. The Government Tort Claims Act is Not Applicable to Cases in Which the Primary Objective is to Obtain Injunctive and Declaratory Relief Against Unlawful Practices By a Government Entity.

Because Government Code § 945.4 makes filing a claim a prerequisite only to a “suit for money or damages,” the requirement does not apply to cases brought “primarily” for injunctive or declaratory relief, even though damages are also part of the relief sought. *See Gatto v. County of Sonoma*, 98 Cal. App. 4th 744, 761 (2002).³ In *Gatto*, the court recognized that

³ *See also, M.G.M. Const. Co. v. Alameda County*, 615 F. Supp 149, 151 (N.D. Cal. 1985) (“[T]he Court is persuaded . . . that the notice of claims provision should not apply . . . since the primary relief sought is a declaration that the County’s affirmative action program violates state law” and “damages available . . . are relatively small.”); *Lozada v. City and County of San Francisco*, 145 Cal. App. 4th 1139, 1166-68 (2006); *Eureka Teacher’s Ass’n. v. Bd. of Educ.*, 202 Cal. App. 3d 469, 474-75 (1988) (“Because . . . claim for backpay and fringe benefits was incidental to her request for reemployment[, it] was not a claim for money or damages within the

(Footnote Continued on Next Page.)

both state and federal case law agree that Tort Claims Act claims requirements do *not* apply to lawsuits seeking declaratory and injunctive relief, where “the vindication of the present and future rights of a large class of . . . persons was the primary purpose of the litigation, and the money damages they also sought was merely incidental to that overreaching goal.” *Id.* at 761.

Courts have consistently held that the Tort Claims Act requirement does not apply to lawsuits in which the chief purpose is to vindicate the civil rights of a group of persons by bringing a halt to ongoing unlawful government practices. For example, in *Indep. Hous. Servs. of San Francisco v. Fillmore Center Assoc.*, 840 F. Supp. 1328 (N.D. Cal. 1993), the plaintiffs sought declaratory and injunctive relief against a redevelopment agency’s unlawful conduct in violation of state and federal civil rights laws that required developments to be accessible to the disabled. The injunctive relief, which included an immediate cessation of funding while the unlawful conduct continued, was coupled with a request for an award of damages. *Id.* at 1358. The court found that administrative tort claims under the Tort Claims Act were not required:

While plaintiffs do seek damages, their request for an injunction declaring that the Agency is in violation of the handicap access laws and must comply with them in the future is of great weight and not just ancillary to the request for damages. IHS’s potential damages are small and particularly inconsequential compared to the effect of the declarations it seeks.

Id. As in this case, the plaintiffs in *Gibson v. County of Riverside*, 181 F. Supp. 2d 1057 (C.D. Cal. 2002), were individual residents suing on their own behalf and representing a class of residents challenging local zoning laws involving age restrictions which directly affected their households and their families. While the complaint sought compensatory and even punitive damages (neither of which are sought for the class in this case), the court ruled that the claims requirement of the Tort Claims Act did not apply to the state civil rights damages claims:

Plaintiffs’ FAC primarily seeks declaratory and injunctive relief, not damages. Plaintiffs want to stay in their homes and want the freedom to allow within their homes the residency of persons younger than 55 years of age. They also want the County to

(Footnote Continued from Previous Page.)

scope of [the Government Tort Claims Act].”).

1 conform its actions to the mandates of state and federal housing
2 laws. Their request for damages is ancillary to this request.

3 *Id.* at 1085.

4 **B. Courts Require Compliance With the Government Tort Claims Act in**
5 **Lawsuits Whose Chief Purpose is to Obtain Monetary Damages.**

6 Cases in which a government tort claim was required are consistent with this
7 analysis. For example, in *Gatto*, the court acknowledged that many state law civil rights cases
8 include claims for injunctive relief, but that such actions would not be exempted from the claims
9 requirements in cases “where the plaintiff *does* seek to recover damages from a public entity *and*
10 *that is his or her chief purpose.*” 98 Cal. App. 4th 744, 760 (emphasis in original). In *Gatto*, an
11 individual sued under the Unruh Civil Rights Act for being ejected from a county fair for
12 wearing a motorcycle club vest, and sought damages of \$35,000, as well as injunctive and
13 declaratory relief. The court reviewed the complaint and determined that monetary damages
14 were the “primary purpose of the action.” *Id.* at 762. “Nothing in the record suggests *Gatto* ever
15 considered his interest in obtaining money damages subsidiary to his interest in injunctive relief.
16 Damages are the first thing mentioned in the title of his complaint and the prayer for relief”
17 *Id.* at 763. This is certainly in sharp contrast to the allegations in this case. Likewise, in *City of*
18 *San Jose v. Superior Court*, 12 Cal. 3d 447 (1974), the three individual plaintiffs sought
19 \$500,000 in damages and the class members sought “recovery for the diminution in the market
20 value of their property . . . on theories of nuisance and inverse condemnation.” *Id.* at 453. There
21 is no indication that plaintiffs or the class sought injunctive relief.

22 The court in *Lozada*, 145 Cal. App. 4th at 1139, also determined that the claims
23 requirement applied because the damages claims were primary. The reasoning of the court
24 supports plaintiffs’ argument that the damages claims in this case are ancillary. The complaint in
25 *Lozada* was brought by an individual police officer who alleged that his state law procedural
26 rights were violated in the course of a departmental investigation. The court found that the
27 damages claim (including civil penalties amounting to \$325,000) was “the primary focus of his
28 action” because of factors that are quite distinct from this case:

[T]he record does not indicate that he had any ‘transcendent interest’ in injunctive or declaratory relief, beyond his ability to obtain civil penalties and actual damages if the court found the department to have acted with ‘malice.’ Lozada was never suspended and so did not seek reinstatement. Nor did he specifically seek reassignment or transfer through a mandamus action or in his prayers for injunctive and declaratory relief (citation omitted). [D]amages are the first thing mentioned in the title and the prayer for relief of his first and second amended complaints.

Id. at 1168-69; *see also Loehr v. City of Ventura*, 147 Cal. App. 3d 1071, 1081-82 (1983) (concluding that the “primary purpose” of this individual wrongful termination case is “pecuniary in nature,” and noting that even the claims for injunctive relief and mandamus “seek recovery for loss of future earnings, emotional and mental distress, pain and suffering, humiliation, and damage to reputation” in the amount of \$1,000,000 in general damages and \$2.5 million in punitive damages).

C. Plaintiffs’ and Class’ Primary Purpose is to Obtain Injunctive and Declaratory Relief Against Defendant’s Unlawful and Discriminatory Policies and Practices and Thus, the Government Tort Claims Act Requirements Do Not Apply.

This lawsuit is in sharp contrast to *Gatto*, *Lozada*, and *Loehr*. From the “Introduction” of the Complaint, the allegations focus on defendant’s policy and practice of “intentionally discriminat[ing] against African-American Section 8 households on the basis of their race and/or source of income” and pursuing “policies and practices that have had an unjustified adverse impact upon them.” (First Amended Complaint at 3.)

Defendant’s illegal policies and practices affect the plaintiffs and class members in their daily lives. As current residents likely to be subjected to this unlawful conduct, it is obvious that to these plaintiffs and class members obtaining injunctive and declaratory relief that will bring a halt to these discriminatory and intimidating practices is “of great weight.” *See Indep. Hous. Servs. of San Francisco*, 840 F. Supp. at 1358. Furthermore, whereas the complaints in cases in which the Tort Claims Act requirements applied begin and end with an emphasis on the damages claims, the complaint in this case is quite the opposite – it focuses throughout on plaintiffs’ chief purpose to challenge and bring to an end the City’s “concerted

1 campaign to reduce the African-American Section 8 population and discourage Section 8
 2 families from moving to Antioch.” (First Amended Complaint ¶ 2.) In contrast to *Lozada*,
 3 where the plaintiff had stipulated that his complaint was for “primarily, money or damages,
 4 while [his] claims for declaratory/injunctive relief were merely incidental,” 145 Cal. App. 4th at
 5 1170, the Complaint here alleges as follows:

6 This class action primarily seeks to end the City’s discriminatory
 7 and unlawful policies and practices. Secondly, this action seeks
 8 statutory minimum damages for the class, and additional damages
 9 for the named plaintiffs.

10 (First Amended Complaint ¶ 4.) Also, and again in contrast to *Gatto*, *Lozada* and *Loehr*, the
 11 Prayer for Relief in the Complaint reflects plaintiffs’ chief purpose by focusing on the non-
 12 pecuniary claims for relief and spelling out in detail the specific practices that plaintiffs seek to
 13 enjoin. (First Amended Complaint at 32 ¶ 2(a-f).) Under pleading standards applicable to this
 14 motion, these allegations alone are sufficient to defeat the Motion for Judgment on the Pleadings.
 15 *See Hal Roach Studios, Inc.*, 896 F.2d at 1550.

16 Plaintiffs and the class specifically allege an ongoing pattern or practice of
 17 discrimination and otherwise unlawful conduct that falls disproportionately on African
 18 Americans and seek to enjoin specific practices of the Antioch Police Department. (First
 19 Amended Complaint ¶ 2.) For example, Plaintiffs make class-wide allegations that the Antioch
 20 Police Department engages in unwarranted and disparately abusive investigations of minor
 21 complaints against African-American Section 8 tenants (*id.* ¶ 47), sends letters to the Housing
 22 Authority in an attempt to terminate Section 8 housing benefits (*id.*), searches homes without
 23 consent or any other lawful authority (*id.* at ¶ 51), and solicits and encourages complaints from
 24 neighbors against African-American, Section 8 households (*id.* at ¶ 53). Plaintiff Bunton
 25 likewise alleges an ongoing course of intimidation and harassment by the Antioch Police
 26 Department since she moved to Antioch to be closer to her mother and to provide better living
 27 conditions for her children. (*Id.* at ¶¶ 83, 89.)

28 In contrast to cases finding that damages are the primary purpose of the action,
 this very substantial request for injunctive relief is coupled with limited damage claims for the

class. The only class monetary relief sought is statutory minimum damages under the Bane Act. *See* Cal. Civil Code § 52(a) (providing statutory minimum damages of \$4,000). No class compensatory or punitive damages are sought. Moreover, the proposed class includes future class members who, by definition, do not have any current claims for damages and thus, whose interest in the case would be solely for injunctive and declaratory relief. (First Amended Complaint ¶ 17 (“Plaintiffs bring this action . . . on behalf of a class of all African-Americans who . . . may hold . . . Section 8 housing vouchers, . . . and all members of their households who . . . will reside in the City of Antioch.”) Furthermore, none of the plaintiffs’ claims, including Ms. Bunton’s non-class claims, seeks punitive damages, also confirming their ancillary nature. When their individual claims are viewed together with the class claims, the primary purpose of the lawsuit is clearly not money damages.

Therefore, it is clear that this is a case where the chief goal of all the plaintiffs – both the individual plaintiffs and the class members – is injunctive and declaratory relief. This is simply not a lawsuit “for money or damages” within the meaning of Gov. Code § 945.4.

II. THE ADMINISTRATIVE CLAIMS FILED BY PLAINTIFFS ALLEGE CLASS CLAIMS FOR STATUTORY DAMAGES.

Even if this Court determines that this suit is covered by the Government Tort Claims Act, the administrative claims filed by the four plaintiffs were in compliance with the statutory requirements for claims on behalf of a class of similar individuals. Since Plaintiff Bunton is a member of the alleged class, her damage claims are likewise in compliance with the Tort Claims Act.

A. Plaintiffs’ Government Tort Claims Allege a Class Claim.

Defendant’s motion ignores the actual language of the administrative claims filed in this case to support its second argument – that none of the four claims “indicated in any other way that the claims were brought on behalf of a class.” (Motion at 2.) While selectively quoting language from the claims so as to be able to mischaracterize them as “diverse and individualized” (*id.* at 2, 7), defendant studiously omits the identical language in each tort claim that shows they are not: “These actions were part of the Department’s illegal policy and practice

1 of discriminatory targeting of African-American families *like mine* who participate in the federal
 2 Section 8 housing subsidy program in Antioch.” Tort Claim of Mary Ruth Scott, Motion Ex. B1
 3 (emphasis added); *see also* Tort Claims of Alyce Denise Payne, Santeya Danyell Williams, and
 4 Karen Latreece Coleman, Motion Exs. B2-4. Each of these tort claims were incorporated by
 5 reference in the Complaint. (First Amended Complaint ¶ 99.)

6 Although each of the four claims provides facts concerning the actions of the
 7 Antioch police officers that caused each plaintiff’s injuries, such actions were alleged to be part
 8 of a pattern and practice of unlawful conduct by the police. Thus, each claim made it very clear
 9 that all these actions by police officers were part of an official policy and practice that targeted
 10 not just the individual claimant but other African-American residents of Antioch who receive
 11 Section 8 benefits. The test enunciated by the *City of San Jose* Court is “substantial compliance”
 12 with the Tort Claims Act, and that test is met by an administrative claim that provides specific
 13 information about the representative plaintiff “and then sufficient information to identify and
 14 make ascertainable the class itself.” 12 Cal. 3d at 457.

15 The four claims filed in this case clearly meet the “substantial compliance” test by
 16 identifying for the City a class of African-American residents of Antioch who receive Section 8
 17 benefits. And, in fact, the language of the claims quoted above is even more detailed and
 18 descriptive than if the claimants had simply added the phrase “on behalf of all others similarly
 19 situated” after describing what happened to them, which even defendant concedes has been
 20 found sufficient by courts to satisfy the Tort Claims Act requirements for class claims. (Motion
 21 at 5 n.5.) *See also California School Employees Ass’n v. Tustin Unified School Dist.*, 148 Cal.
 22 App. 4th 510 (2007) (finding organization had complied with the Tort Claims Act by filing
 23 complaint on behalf of one member and referencing its effects on other members even though
 24 the organization did not use the “similarly situated” language). Administrative claims “need not
 25 contain the detail and specificity required of a pleading, but need only ‘fairly describe what [the]
 26 entity is alleged to have done.’” *Stockett v. Assoc. of Cal. Water Agencies Joint Powers Ins.*
 27 *Auth.*, 34 Cal. 4th 441, 446 (2004) (quoting *Shoemaker v. Meyers*, 2 Cal. App. 4th 1407, 1426
 28 (1992)). Here the claims clearly allege, and put the City on notice, that it is liable for class-wide

1 illegal conduct.

2 **B. Defendant Improperly Conflates the Requirements for the**
 3 **Administrative Claims Procedure with the Requirements for Judicial**
 4 **Class Certification in the Litigation.**

5 Defendant also attempts to import class certification standards into the claim's
 6 exhaustion process in arguing that the claims fail to meet the "substantial compliance" test
 7 because they "fail to establish a well-defined community of interest in questions of law and fact."
 8 (Motion at 7.) While it is true that the court in *San Jose* did find that there was an "insufficient
 9 community of interest," that conclusion had *absolutely nothing to do with the sufficiency of the*
 10 *administrative claims* – rather, the Court was discussing at that point in its opinion the
 11 requirements for class certification after a full evidentiary hearing before the trial court. *San*
Jose, 12 Cal. 3d at 458-63.

12 Throughout the Motion, defendant conflates the requirements for "substantial
 13 compliance" in the claims procedure with the more exacting requirements for judicial class
 14 certification in the litigation.⁴ Administrative claims "need not contain the detail and specificity
 15 required of a pleading, but need only 'fairly describe what [the] entity is alleged to have done.'"
 16 *Stockett*, 34 Cal. 4th at 446 (quoting *Shoemaker*, 2 Cal. App. 4th at 1426)). Given that such
 17 claims are filed by mail and often without the assistance of lawyers, courts have stressed that the
 18 statutory claims requirements "should not be applied to snare the unwary." *Stockett*, 34 Cal. 4th
 19 at 446 (quoting *Elias v. San Bernardino County Flood Control Dist.*, 68 Cal. App. 3d 70, 74
 20 (1977)). Defendant's argument that the administrative claims must provide "well-defined
 21 communities of interest" flies in the face of the California Supreme Court's admonition: "We do
 22 not believe the claims statutes were intended to thwart class relief." *City of San Jose*, 12 Cal. 3d
 23 at 457.

24 If accepted, defendant's standards for administrative class claims would make it

25
 26 ⁴ That defendant is conflating the requirements for a class claim under the Tort Claims Act with
 27 the requirements for class certification of a federal case is confirmed by its incorporation of
 28 legal arguments from its brief opposing class certification into its brief supporting its Motion for
 Judgment on the Pleadings (Motion at 7, n.7.)

1 foolhardy for a class claimant not to “lawyer up” in the pre-litigation period even before the
 2 decision to litigate was made. Defendant’s arguments are utterly inconsistent with the
 3 recognition by the *City of San Jose* Court that imposing a requirement of detailed information on
 4 administrative class claims would “severely restrict the maintenance of appropriate class actions
 5 – *contrary to recognized policy favoring them.*” *Id.* at 457 (emphasis added). Defendant’s
 6 argument also contravenes the policy enunciated by courts – that the claims presentation statute
 7 “should be given a liberal construction to permit full adjudication on the merits.” *Minsky v. City*
 8 *of Los Angeles*, 11 Cal. 3d 113, 123 (1974); *see also Stockett*, 34 Cal. 4th at 449; *Smith v. County*
 9 *of Los Angeles*, 214 Cal. App. 3d 266, 280 (1989); *Elias*, 68 Cal. App. 3d at 74; *Blair v. Super.*
 10 *Ct.*, 218 Cal. App. 3d 221, 224-25 (1990).

11 In support of this argument that the administrative claim must establish “a well-
 12 defined community of interest,” defendant relies on a single dated case – *Eaton v. Ventura Port*
 13 *Dist.*, 45 Cal. App. 3d 862 (1975). (Motion at 5-6). This case does not bear that freight. First, it
 14 should be noted that in *Eaton*, the actual administrative claim was not included in the judicial
 15 record, and on that basis alone the court held that plaintiffs were not in substantial compliance
 16 with the Tort Claims Act. *Id.* at 868. Second, the allegations of that case, which involve
 17 compensatory damage claims for a diffuse and diverse class, stand in stark contrast to the present
 18 case, where the claim specifically alleges a pattern and practice of discriminatory conduct.

19 In any event, the allegations of the tort claims easily establish a community of
 20 interest for the purposes of claim notice. Each claim identifies a pattern of conduct that affects
 21 similarly situated African-American Section 8 families (“like mine”).

22 **C. Defendant Had Ample Notice and Opportunity to Investigate**
 23 **Claims on a Class-Wide Basis.**

24 The purposes of the claims presentation requirement are: 1) to provide sufficient
 25 information to the government entity so that it can do an early investigation of the facts, 2) to
 26 thereby provide an opportunity to settle claims before litigation, and/or 3) to provide the
 27 government an opportunity to correct the condition or practices which give rise to the claim to
 28 avoid future liability. *San Jose*, 12 Cal. 3d at 455; *Lozada*, 145 Cal. App. 4th at 1152. The

1 plaintiffs' tort claims make it manifest that they have been injured by actions that are the official
 2 policies and practices of the Antioch police, and that other African-American Section 8 families
 3 ("like mine") have been subjected to these illegal "discriminatory" policies and practices.

4 In the analogous context of pre-litigation administrative complaints of
 5 discrimination under Title VII or the California FEHA, both state and federal courts have
 6 recognized that such remedial statutes utilize "procedures designed for the unschooled, not for
 7 the 'sophisticated [and]' the cognoscenti (citation omitted)," and thus, in determining the
 8 sufficiency of the claim, the court looks to both the language of the claim *and* the "scope of the
 9 . . . investigation which can reasonably be expected to grow out of the charge of discrimination."
 10 *Sandhu v. Lockheed Missiles & Space Co.*, 26 Cal. App. 4th 846, 858-59 (1994) (quoting
 11 *Sanchez v. Standard Brand*, 431 F.2d 455, 466 (5th Cir. 1970)); *accord Oubichon v. North Am.*
 12 *Rockwell Corp.*, 482 F.2d 569, 571 (9th Cir. 1973). In *Paige v. State of Cal.*, 102 F.3d 1035 (9th
 13 Cir. 1996), the Ninth Circuit directly addressed whether an administrative claim "not explicitly
 14 raising class claims could support a class action." *Id.* at 1041. The Court held that the
 15 administrative charges of discriminatory hiring practices by the California Highway Patrol,
 16 raised by a single officer who was denied promotion and with no mention of a class, was
 17 sufficient to support a subsequently filed class action complaint:

18 [A] claim of racial discrimination in the examination process that
 19 determines eligibility for promotion would necessarily result in an
 20 investigation of the CHP's promotion practices, interview system,
 and any pattern of racial discrimination that results from the
 administration of the agency's procedures.

21 *Id.* at 1042.

22 This reasoning fully applies to the claims, which did in fact explicitly inform
 23 defendant that the claimants were challenging official policies and practices of the City and the
 24 Antioch Police Department, and that others aside from the individual claimants were affected.

25 CONCLUSION

26 For the foregoing reasons, plaintiffs respectfully request that defendant's Motion
 27 for Judgment on the Pleadings be denied.

1 DATED: December 21, 2009

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA

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3
4 By: /s/ Alan L. Schlosser
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